

(ii) The SBA Office of Inspector General or its agents will conduct, supervise, or coordinate SBA's audits, which may, at SBA's discretion, be audits of the SBDC network, even though single audits may have been performed. In such instances, SBA will conduct such audits in compliance with *Government Auditing Standards* and all applicable OMB Circulars.

(c) *Investigations.* SBA may conduct investigations as it deems necessary to determine whether any person or entity has engaged in acts or practices constituting a violation of the Act, any rule, regulation or order issued under that Act, or any other applicable Federal law.

## **PART 134—RULES OF PROCEDURE GOVERNING CASES BEFORE THE OFFICE OF HEARINGS AND APPEALS**

### **Subpart A—General Rules**

Sec.

- 134.101 Definitions.
- 134.102 Jurisdiction of OHA.
- 134.103 Rules applicable to time periods provided in this part.

### **Subpart B—Rules of Practice for Most Cases**

- 134.201 Scope of the rules in this subpart B.
- 134.202 Commencement of cases.
- 134.203 The petition.
- 134.204 Service and filing requirements.
- 134.205 Motion for a more definite statement.
- 134.206 The answer.
- 134.207 Amendments and supplemental pleadings.
- 134.208 Representation in cases before OHA.
- 134.209 Requirement of signature.
- 134.210 Intervention.
- 134.211 Motions.
- 134.212 Summary decision.
- 134.213 Discovery.
- 134.214 Subpoenas.
- 134.215 Interlocutory appeals.
- 134.216 Alternative dispute resolution procedures.
- 134.217 Settlement.
- 134.218 Judges.
- 134.219 Sanctions.
- 134.220 Prohibition against *ex parte* communications.
- 134.221 Prehearing conferences.
- 134.222 Oral hearing.
- 134.223 Evidence.
- 134.224 Standards for decision.

- 134.225 The record.
- 134.226 The decision.
- 134.227 Finality of decisions.
- 134.228 Review of initial decisions.
- 134.229 Termination of jurisdiction.

### **Subpart C—Rules of Practice for Appeals From Size Determinations and SIC Code Designations**

- 134.301 Scope of the rules in this subpart C.
- 134.302 Who may appeal.
- 134.303 No absolute right to an appeal from a size determination.
- 134.304 Commencement of appeals from size determinations and SIC code designations.
- 134.305 The appeal petition.
- 134.306 Transmission of the case file.
- 134.307 Service and filing requirements.
- 134.308 Limitation on new evidence and adverse inference from non-submission in appeals from size determinations.
- 134.309 Response to an appeal petition.
- 134.310 Discovery.
- 134.311 Oral hearings.
- 134.312 Evidence.
- 134.313 Applicability of subpart B provisions.
- 134.314 Standard of review.
- 134.315 The record.
- 134.316 The decision.
- 134.317 Termination of jurisdiction.
- 134.318 Return of the case file.

### **Subpart D—Rules of Practice for Appeals Under the 8(a) Program**

- 134.401 Scope of the rules in this subpart D.
- 134.402 Appeal petition.
- 134.403 Service of appeal petition.
- 134.404 Decision by Administrative Law Judge.
- 134.405 Jurisdiction.
- 134.406 Review of administrative record.
- 134.407 Evidence beyond the record and discovery.
- 134.408 Decision on appeal.

### **Subpart E—Implementation of the Equal Access to Justice Act**

- 134.501 What is the purpose of this subpart?
- 134.502 Under what circumstances may I apply for reimbursement?
- 134.503 What is an adversary adjudication?
- 134.504 What benefits may I claim?
- 134.505 Under what circumstances are fees and expenses reimbursable?
- 134.506 Who is eligible for possible reimbursement?
- 134.507 How do I know which eligibility requirement applies to me?
- 134.508 What are the special rules for calculating net worth and number of employees?

## § 134.101

## 13 CFR Ch. I (1–1–00 Edition)

- 134.509 What is the difference between a fee and an expense?
- 134.510 Are there limitations on reimbursement for fees and expenses?
- 134.511 What should I include in my application for an award?
- 134.512 What must a net worth exhibit contain?
- 134.513 What documentation do I need for fees and expenses?
- 134.514 What deadlines apply to my application for an award and where do I send it?
- 134.515 How will proceedings relating to my application for fees and expenses be conducted?
- 134.516 How will I know if I receive an award?
- 134.517 May I seek review of the ALJ's decision on my award?
- 134.518 How are awards paid?

AUTHORITY: 5 U.S.C. 504; 15 U.S.C. 632, 634(b)(6), and 637(a).

SOURCE: 61 FR 2683, Jan. 29, 1996, unless otherwise noted.

### Subpart A—General Rules

#### § 134.101 Definitions.

As used in this part:

*AA/OHA* means the Assistant Administrator for OHA.

*Act* means the Small Business Act, 15 U.S.C. 631 *et seq.*

*Address* means the primary home or business address of a person or entity, including the street location or postal box number, city or town, state, and postal zip code.

*Area Office* means a Government Contracting Area Office or a Disaster Area Office of the Small Business Administration.

*Day* means a calendar day, unless a Judge specifies otherwise.

*Hearing* means the presentation and consideration of argument and evidence. A hearing need not include live testimony or argument.

*Investment Act* means the Small Business Investment Act of 1958, 15 U.S.C. 661 *et seq.*

*Judge* means an Administrative Law Judge or an Administrative Judge of OHA, or the AA/OHA when he or she acts as an Administrative Judge.

*OHA* means the Office of Hearings and Appeals.

*Party* means the petitioner, respondent, or intervenor.

*Person* means an individual or any form of business entity.

*Petition* means a written complaint, a written appeal from an SBA determination, or a written request for the initiation of proceedings before OHA.

*Pleading* means a petition, an order to show cause commencing a case, an appeal petition, an answer, or any amendment or supplement to those documents.

*Respondent* means any person or governmental agency against which a case has been brought before OHA.

*SBA* means the Small Business Administration.

*SIC code* means Standard Industrial Classification code.

*Size determination* means a formal size determination made by an Area Office.

#### § 134.102 Jurisdiction of OHA.

OHA has authority to conduct proceedings in the following cases:

(a) The revocation or suspension of Small Business Investment Company licenses, cease and desist orders, and the removal or suspension of directors and officers of licensees, under the Investment Act and part 107 of this chapter;

(b) Alleged violations of those civil rights laws which are effectuated by parts 112, 113, 117, and 136 of this chapter;

(c) The revocation of the privilege of a person to conduct business with SBA under the Act and part 103 of this chapter;

(d) The eligibility of, or preferred or certified status of, any bank or non-bank lender to continue to participate in SBA loan programs under the Act and part 120 of this chapter;

(e) The suspension or termination of surety bond program participants under 15 U.S.C. 694a *et seq.* and part 115 of this chapter;

(f) The rights, privileges, or obligations of development companies under section 504 of the Investment Act and part 120, subpart H, of this chapter;

(g) Allowance of fees and expenses under the Equal Access to Justice Act, 5 U.S.C. 504;

(h) Debarment from appearance before the SBA because of post-employment restrictions under 18 U.S.C. 207 and part 105 of this chapter;

(i) Collection of debts owed to SBA and the United States under the Debt

## Small Business Administration

## § 134.204

Collection Act of 1982 and part 140 of this chapter;

(j) Appeals from the following SBA 8(a) program determinations under the Act and part 124 of this chapter:

(1) Denial of program admission based solely on a negative finding as to social disadvantage, economic disadvantage, ownership or control; program termination; program graduation; or denial of a waiver of the requirement to perform to completion an 8(a) contract; and

(2) Program suspension;

(k) Appeals from size determinations and SIC code designations under part 121 of this chapter;

(l) The imposition of civil penalties and assessments against persons who make false claims or statements to SBA under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801-3812 and part 142 of this chapter; and

(m) Any other hearing, determination, or appeal proceeding referred to OHA by the Administrator of SBA.

### § 134.103 Rules applicable to time periods provided in this part.

(a) The day from which the time period is computed is excluded, but the last business day is counted, excluding Saturday, Sunday, or Federal holiday.

(b) At the Judge's initiative, or upon the motion of a party showing good cause, the Judge may modify any of the applicable time limits, other than those established by statute and those governing when a case may be commenced. Any motion to extend a time limit must be filed and served before the expiration of that time limit.

### Subpart B—Rules of Practice for Most Cases

#### § 134.201 Scope of the rules in this subpart B.

The rules in this subpart generally apply to all proceedings over which OHA has jurisdiction, except for appeals from size determinations and SIC code designations. Specific procedural rules pertaining to 8(a) program appeals and to proceedings under the Program Fraud Civil Remedies Act are set forth, respectively in subpart D of this part and part 142 of this chapter. In the case of a conflict between a particular

rule in this subpart and a rule of procedure pertaining to OHA appearing in another subpart of this part or another part of this chapter, the latter rule shall govern.

[61 FR 2683, Jan. 29, 1996, as amended at 63 FR 35766, June 30, 1998]

#### § 134.202 Commencement of cases.

A case may be commenced by filing a written petition within the following time periods:

(a) Except as provided by paragraphs (b) through (d) of this section, no later than 45 days from the date of service of the SBA action or determination to which the petition relates;

(b) In debt collection proceedings under part 140 of this chapter, no later than 15 days after receipt of a notice of indebtedness and intention to collect such debt by salary or administrative offset;

(c) In applications for an award of fees pursuant to subpart E of this part, no later than 30 days after the decision to which it applies becomes final;

(d) For 8(a) program suspension proceedings, see § 134.305 of this chapter.

[61 FR 2683, Jan. 29, 1996, as amended at 63 FR 35766, June 30, 1998]

#### § 134.203 The petition.

(a) A petition must contain the following:

(1) The basis of OHA's jurisdiction;

(2) The SBA determination being appealed.

(3) A clear and concise statement of the factual basis of the case;

(4) The relief being sought; and

(5) The name, address, telephone number, and signature of the petitioner or its attorney.

(b) A petition which does not contain all of the information required by paragraph (a) of this section may be dismissed, with or without prejudice, at the Judge's own initiative, or upon motion of the respondent.

[61 FR 2683, Jan. 29, 1996, as amended at 63 FR 35766, June 30, 1998]

#### § 134.204 Service and filing requirements.

(a) *Service.* Each party is responsible for the service of its pleadings and

## § 134.205

## 13 CFR Ch. I (1–1–00 Edition)

other submissions upon all other parties or their attorneys. Unless otherwise ordered by the Judge, service is made by providing each party, or its attorney, with a copy of the pleading or other submission by personal delivery, first-class mail, express mail, facsimile transmission, or commercial delivery service. Service by mail must be directed as follows:

(1) To a party's last-known residence or business address if it has not yet appeared in the case, or to the address of a party which has appeared as shown in its submission;

(2) If a party has appeared in the case through an attorney, to the address of the attorney shown in the party's submission or in a notice of appearance;

(3) If SBA is the party, unless an attorney has been specified in SBA's submissions to OHA, by mailing to: Office of General Counsel, Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

(b) *Filing.* (1) All pleadings and other submissions must be filed with OHA by personal delivery, first-class mail, express mail, facsimile transmission, or commercial delivery service. Filing may only be accomplished at the following address: Office of Hearings and Appeals, Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

(2) If filing is by personal delivery or commercial delivery service, such filing must be accomplished between the hours of 8:30 a.m. and 5:00 p.m. If filing is by facsimile transmission, the telephone number to be used may be obtained by calling OHA.

(c) *Copies.* Only the original of a pleading or other submission must be filed with OHA. In the case of a document offered as evidence, an authenticated copy may be filed instead of the original.

(d) *Certificate of service.* A signed certificate stating how and when service was made on all parties must be attached to each pleading or other submission filed with OHA.

(e) *Date.* Unless otherwise specified by the Judge, the date of service or filing is as follows:

(1) If by facsimile transmission, the date of transmission.

(2) If by first-class mail, the date of postmark. Where the postmark is illegible or incomplete, there is a rebuttable presumption that the postmark was dated five days prior to the date of receipt.

(3) If by personal delivery, express mail, or commercial delivery service, the date of receipt.

(f) *Confidential information.* Any information in pleadings or other submissions that is believed by the submitting party to constitute proprietary or confidential information need not be served upon parties so long as the deletions are clearly identified and generally described in the documents which are served. Upon motion, the Judge may direct that the withheld information be provided to other parties, subject to any appropriate protective order.

### § 134.205 Motion for a more definite statement.

(a) *Procedure.* No later than 20 days after service of the petition or order to show cause, the respondent may serve and file a motion requesting a more definite statement of particular allegations in the petition.

(b) *Stay.* The serving and filing of a motion for a more definite statement stays the time for serving and filing an answer. The Judge will establish the time for serving and filing an answer.

### § 134.206 The answer.

(a) A respondent must serve and file an answer within 45 days after the service of a petition or order to show cause, except that debt collection proceeding answers are due within 30 days.

(b) The answer must contain the following:

(1) An admission or denial of each of the factual allegations contained in the petition or order to show cause, or a statement that the respondent denies knowledge or information sufficient to determine the truth of a particular allegation;

(2) Any affirmative defenses; and

(3) The name, address, telephone number, and signature of the respondent or its attorney.

(c) Allegations in the petition or order to show cause which are not answered in accordance with paragraph

## Small Business Administration

## § 134.211

(b)(1) of this section will be deemed admitted unless injustice would occur.

(d) Upon an appeal from an SBA determination concerning the 8(a) program, SBA must serve and file the administrative record pertaining to that determination within the same time period applicable to the service and filing of its answer. If SBA fails to do so, the Judge will issue an order directing SBA to serve and file the administrative record by a specified date.

(e) If the respondent fails to serve and file an answer within the time period set forth in paragraph (a) of this section, or within any extended time period granted by the Judge, that failure will constitute a default. Following such a default, the respondent may be prohibited from participating further in the case, except to serve and file the administrative record in accordance with paragraph (d) of this section.

### § 134.207 Amendments and supplemental pleadings.

(a) *Amendments.* Upon motion, and under terms needed to avoid prejudice to any non-moving party, the Judge may permit the service and filing of amendments to pleadings. However, an amendment will not be permitted if it would cause unreasonable delay in the determination of the matter.

(b) *Supplements.* Upon motion, and under terms needed to avoid prejudice to any non-moving party, the Judge may permit the service and filing of a supplemental pleading setting forth relevant transactions or occurrences that have taken place since the filing of the original pleading.

(c) *8(a) appeals.* In 8(a) program appeals, amendments to pleadings and supplemental pleadings will be permitted by the Judge only upon a showing of good cause.

(d) *Answer.* In an order permitting the serving and filing of an amended or supplemented petition or order to show cause, the Judge will establish the time for serving and filing an answer.

### § 134.208 Representation in cases before OHA.

(a) A party may represent itself, or be represented by a duly licensed attorney. A member of a partnership may represent the partnership, and an offi-

cer may represent a corporation, trust, or association.

(b) An attorney for a party who did not appear on behalf of that party in the party's first filing with OHA must serve and file a written notice of appearance.

(c) An attorney seeking to withdraw from a case must serve and file a motion for the withdrawal of his or her appearance.

### § 134.209 Requirement of signature.

Every written submission to OHA, other than evidence, must be signed by the party filing that submission, or by the party's attorney. By signing the submission, a party or its attorney attests that the statements and allegations in that submission are true to the best of its knowledge, and that the submission is not being filed for the purpose of delay or harassment.

### § 134.210 Intervention.

(a) *By SBA.* SBA may intervene as of right at any time in any case until final decision.

(b) *By interested persons.* Any individual, partnership, association, corporation, trust, or governmental agency may move to intervene at any time until final decision by serving and filing a motion to intervene containing a statement of the movant's interest in the case and the necessity for intervention to protect such interest. The Judge may grant leave to intervene upon such terms as he or she deems appropriate.

### § 134.211 Motions.

(a) *Contents.* All motions must state the relief being requested, as well as the grounds and any authority for that relief.

(b) *Response.* No later than 20 days after the service of a motion, all non-moving parties must serve and file a response or be deemed to have consented to the relief sought. Unless the Judge directs otherwise, the moving party will have no right to reply to a response, nor will oral argument be heard on the motion.

(c) *Service of orders.* OHA will serve upon all parties any written order issued in response to a motion.

## § 134.212

(d) *Stay*. A motion to dismiss stays the time to answer. The Judge will establish the time for serving and filing an answer in the order determining the motion to dismiss.

[61 FR 2683, Jan. 29, 1996, as amended at 63 FR 35766, June 30, 1998]

### § 134.212 Summary decision.

(a) *Grounds*. A party may move for summary decision at any time as to all or any portion of the case, on the grounds that there is no genuine issue as to any material fact, and that the moving party is entitled to a decision in its favor as a matter of law.

(b) *Contents of motion*. The motion must include a statement of the material facts believed not to be disputed, and relevant law. Supporting affidavits may also be included.

(c) *Cross-motions*. In its response to a motion for summary decision, a party may cross-move for summary decision. The initial moving party may serve and file a response to any cross-motion for summary decision within 20 days after the service of that cross-motion.

(d) *Stay*. A motion for summary decision stays the time to answer. The Judge will establish the time for serving and filing an answer in the order determining the motion for summary decision.

### § 134.213 Discovery.

(a) *Motion*. A party may obtain discovery only upon motion, and for good cause shown.

(b) *Forms*. The forms of discovery which a Judge can order under paragraph (a) of this section include requests for admissions, requests for production of documents, interrogatories, and depositions.

(c) *Limitations*. Discovery may be limited in accordance with the terms of a protective order. Further, privileged information and irrelevant issues or facts will not be subject to discovery.

(d) *Disputes*. If a dispute should arise between the parties over a particular discovery request, the party seeking discovery may serve and file a motion to compel discovery. Discovery may be opposed on the grounds of harassment, needless embarrassment, irrelevance,

## 13 CFR Ch. I (1–1–00 Edition)

undue burden or expense, privilege, or confidentiality.

[61 FR 2683, Jan. 29, 1996, as amended at 63 FR 35766, June 30, 1998]

### § 134.214 Subpoenas.

(a) *Availability*. At the request of a party, or upon his or her own initiative, a Judge may issue a subpoena requiring a witness to appear and testify, or to produce particular documents, at a specified time and place.

(b) *Requests*. A request for the issuance of a subpoena must be written, served upon all parties, and filed. The request must clearly identify the witness and any documents to be subpoenaed, and must set forth the relevance of the testimony or documents sought.

(c) *Service*. A subpoena may only be served by personal delivery. The individual making service shall prepare an affidavit stating the date, time, and place of the service. The party which obtained the subpoena must serve upon all other parties, and file with OHA, a copy of the subpoena and affidavit of service within 2 days after service is made.

(d) *Motion to quash*. A motion to limit or quash a subpoena must be served and filed within 10 days after service of the subpoena, or by the return date of the subpoena, whichever date comes first. Any response to the motion must be served and filed within 10 days after service of the motion, unless a shorter time is specified by the Judge. No oral argument will be heard on the motion unless the Judge directs otherwise.

### § 134.215 Interlocutory appeals.

(a) *General*. A motion for leave to take an interlocutory appeal from a Judge's ruling will not be entertained in those proceedings in which OHA issues final decisions. In all other cases, an interlocutory appeal will be permitted only if, upon motion by a party, or upon the Judge's own initiative, the Judge certifies that his or her ruling raises a question which is immediately appealable. Interlocutory appeals will be decided by the AA/OHA or a designee.

(b) *Motion for certification*. A party must serve and file a motion for certification no later than 20 days after

## Small Business Administration

## § 134.221

issuance of the ruling to which the motion applies. A denial of the motion does not preclude objections to the ruling in any subsequent request for review of an initial decision.

(c) *Basis for certification.* The Judge will certify a ruling for interlocutory appeal only if he or she determines that:

(1) The ruling involves an important question of law or policy about which there is substantial ground for a difference of opinion; and

(2) An interlocutory appeal will materially expedite resolution of the case, or denial of an interlocutory appeal would cause undue hardship to a party.

(d) *Stay of proceedings.* A stay while an interlocutory appeal is pending will be at the discretion of the Judge.

### § 134.216 Alternative dispute resolution procedures.

At any time during the pendency of a case, the parties may submit a joint motion requesting that the Judge permit the use of alternative dispute resolution procedures to assist in resolving the matter. If the motion is granted, the Judge will also stay the proceedings before OHA, in whole or in part, as he or she deems appropriate, pending the outcome of the alternative dispute resolution procedures.

### § 134.217 Settlement.

At any time during the pendency of a case, the parties may submit a settlement agreement, signed by all settling parties, to the Judge. Settlement negotiations, and rejected settlement agreements, are not admissible into evidence.

### § 134.218 Judges.

(a) *Assignment.* The AA/OHA will assign all cases subject to the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, to an Administrative Law Judge. The AA/OHA will assign all other cases before OHA to either an Administrative Law Judge or an Administrative Judge, or, if the AA/OHA is a duly licensed attorney, to himself or herself.

(b) *Authority.* Except as otherwise limited by this part, or by statute or other regulation, a Judge has the authority to take all appropriate action to ensure the efficient, prompt, and

fair determination of a case, including, but not limited to, the authority to administer oaths and affirmations and to subpoena and examine witnesses.

(c) *Recusal.* Upon the motion of a party, or upon the Judge's own initiative, a Judge will promptly recuse himself or herself from further participation in a case whenever disqualification is appropriate due to conflict of interest, bias, or some other significant reason. A denial of a motion for recusal may be immediately appealed to the AA/OHA, or to the Administrative Law Judge if the AA/OHA is the Judge, but that appeal will not stay proceedings in the case.

### § 134.219 Sanctions.

A Judge may impose appropriate sanctions, except for fees, costs, or monetary penalties, which he or she deems necessary to serve the ends of justice, if a party or its attorney:

(a) Fails to comply with an order of the Judge;

(b) Fails to comply with the rules set forth in this part;

(c) Acts in bad faith or for purposes of delay or harassment;

(d) Submits false statements knowingly, recklessly, or with deliberate disregard for the truth; or

(e) Otherwise acts in an unethical or disruptive manner.

### § 134.220 Prohibition against ex parte communications.

No person shall consult or communicate with a Judge concerning any fact, question of law, or SBA policy relevant to the merits of a case before that Judge except on prior notice to all parties, and with the opportunity for all parties to participate. In the event of such prohibited consultation or communication, the Judge will disclose the occurrence in accordance with 5 U.S.C. 557(d)(1), and may impose such sanctions as he or she deems appropriate.

### § 134.221 Prehearing conferences.

Prior to a hearing, the Judge, at his or her own initiative, or upon the motion of any party, may direct the parties or their attorneys to appear, by telephone or in person, in order to consider any matter which may assist in

## § 134.222

the efficient, prompt, and fair determination of the case. The conference may be recorded verbatim at the discretion of the Judge, and, if so, a party may purchase a transcript, at its own expense, from the recording service.

### § 134.222 Oral hearing.

(a) *Availability.* A party may obtain an oral hearing only if:

(1) It is required by regulation; or

(2) Following the motion of a party, or at his or her own initiative, the Judge orders an oral hearing upon concluding that there is a genuine dispute as to a material fact that cannot be resolved except by the taking of testimony and the confrontation of witnesses.

(b) *Place and time.* The place and time of oral hearings is within the discretion of the Judge, who shall give due regard to the necessity and convenience of the parties, their attorneys, and witnesses. The Judge may direct that an oral hearing be conducted by telephone.

(c) *Public access.* Unless otherwise ordered by the Judge, all oral hearings are public.

(d) *Payment of subpoenaed witnesses.* A party which obtains a witness' presence at an oral hearing by subpoena, must pay to that witness the fees and mileage costs to which the witness would be entitled in Federal Court.

(e) *Recording.* Oral hearings will be recorded verbatim. A transcript of a recording may be purchased by a party, at its own expense, from the recording service.

[61 FR 2683, Jan. 29, 1996, as amended at 63 FR 35766, June 30, 1998]

### § 134.223 Evidence.

(a) *Federal Rules of Evidence.* Unless contrary to a particular rule in this part, or an order of the Judge, the Federal Rules of Evidence will be used as a general guide in all cases before OHA.

(b) *Hearsay.* Hearsay evidence is admissible if it is deemed by the Judge to be relevant and reliable.

### § 134.224 Standards for decision.

The decision of a Judge will be based upon a preponderance of the evidence.

## 13 CFR Ch. I (1-1-00 Edition)

### § 134.225 The record.

(a) *Contents.* The record of a case before OHA will consist of all pleadings, motions, and other non-evidentiary submissions, all admitted evidence, all orders and decisions, and any transcripts of proceedings in the case.

(b) *Public access.* Except for information subject to a protective order, proprietary or confidential information withheld in accordance with this part, or any other information which is excluded from disclosure by law or regulation, the record will be available at OHA for public inspection during normal business hours. Copies of the documents available for public inspection may be obtained by the public upon payment of any duplication charges.

(c) *Closure.* The Judge will set the date upon which the pre-decisional record of the case will be closed, and after which no additional evidence or argument will be accepted.

### § 134.226 The decision.

(a) *Contents.* Following closure of the record, the Judge will issue a decision containing findings of fact and conclusions of relevant law, reasons for such findings and conclusions, and any relief ordered. The contents of the record will constitute the exclusive basis for a decision.

(b) *Time limits.* Decisions pertaining to the collection of debts owed to SBA and the United States under the Debt Collection Act of 1982 and part 140 of this chapter must be rendered within 60 days after a petition is filed.

(c) *Service.* OHA will serve a copy of all written decisions on:

(1) Each party, or, if represented by counsel, on its counsel; and

(2) SBA's General Counsel, or his or her designee, if SBA is not a party.

### § 134.227 Finality of decisions.

(a) *Final decisions.* A decision on the merits shall be a final decision, upon issuance, in proceedings concerning the collection of debts owed to SBA and the United States, under the Debt Collection Act of 1982 and part 140 of this chapter.

(b) *Initial decisions.* All decisions on the merits other than those set forth in paragraph (a) of this section are initial decisions. However, unless a request for



## Small Business Administration

## § 134.304

review is filed pursuant to § 134.228(a), an initial decision shall become the final decision of SBA 30 days after its issuance.

### § 134.228 Review of initial decisions.

(a) *Request for review.* Within 30 days after the service of an initial decision, any party, or SBA's Office of General Counsel, may serve and file with OHA a request for review. A request for review must set forth the filing party's specific objections to the initial decision, and any alleged support for those objections in the record, or in case law, statute, regulation, or SBA policy. A party must serve its request for review upon all other parties and upon SBA's Office of General Counsel.

(b) *Response.* Within 20 days after the service of a request for review, any party, or SBA's Office of General Counsel, may serve and file with OHA a response. A party must serve its response upon all other parties and upon SBA's Office of General Counsel.

(c) *Transfer of the record.* Upon receipt of all responses, or 30 days after the filing of a request for review, whichever is earlier, OHA will transfer the record of the case to the Administrator. The Administrator, or his or her designee, will then review the record.

(d) *Standard of review.* Upon review, the Administrator, or his or her designee, will sustain the initial decision unless it is based on an erroneous finding of fact or an erroneous interpretation or application of case law, statute, regulation, or SBA policy.

(e) *Order.* The Administrator, or his or her designee, will:

(1) Affirm, reverse, or modify the initial decision, which determination will become the final decision of the SBA upon issuance; or

(2) Remand the initial decision to the Judge for appropriate further proceedings.

### § 134.229 Termination of jurisdiction.

The jurisdiction of OHA will terminate upon the issuance of a decision by a Judge resolving all material issues of fact and law unless the case is subsequently remanded for appropriate further proceedings, pursuant to § 134.228(e) (2).

## Subpart C—Rules of Practice for Appeals From Size Determinations and SIC Code Designations

### § 134.301 Scope of the rules in this subpart C.

The rules of practice in this subpart C apply to all appeals to OHA from:

(a) Formal size determinations made by an SBA Government Contracting Area Office, under part 121 of this chapter, or by a Disaster Area Office, in connection with applications for disaster loans; and

(b) SIC code designations, pursuant to part 121 of this chapter.

### § 134.302 Who may appeal.

Appeals from size determinations and SIC code designations may be filed with OHA by the following, as applicable:

(a) Any person adversely affected by a size determination;

(b) Any person adversely affected by a SIC code designation. However, with respect to an 8(a) contract, only the Associate Administrator for Minority Enterprise Development may appeal a SIC code designation;

(c) The Associate or Assistant Administrator for the SBA program involved, through SBA's Office of General Counsel; or

(d) The procuring agency contracting officer responsible for the procurement affected by a size determination.

### § 134.303 No absolute right to an appeal from a size determination.

It is within the discretion of the Judge whether to accept an appeal from a size determination. If the Judge decides not to consider such an appeal, he or she will issue an order denying review, and specifying the reasons for the decision.

### § 134.304 Commencement of appeals from size determinations and SIC code designations.

(a) Appeals from size determinations and SIC code designations must be commenced by serving and filing an appeal petition as follows:

(1) If appeal is from a size determination in a pending procurement or pending Government property sale, then the

appeal petition must be served and filed within 15 days after service of the size determination;

(2) If appeal is from a size determination other than one in a pending procurement or pending Government property sale, then the appeal petition must be served and filed within 30 days after service of the size determination;

(3) If appeal is from a SIC code designation, then the appeal petition must be served and filed within 10 days after the issuance of the initial invitation for bids or initial request for proposals or quotations.

(b) An untimely appeal will be dismissed. However, an appeal which is untimely under paragraph (a)(1) of this section, with respect to a pending procurement or sale, may, if timely under paragraph (a)(2) of this section, proceed with respect to future procurements or sales.

**§ 134.305 The appeal petition.**

(a) *Form.* There is no required format for an appeal petition. However, it must include the following information:

(1) The Area Office which issued the size determination, or the contracting office which designated the SIC code;

(2) The solicitation or contract number, and the name, address, and telephone number of the contracting officer;

(3) A full and specific statement as to why the size determination or SIC code designation is alleged to be in error, together with argument supporting such allegations; and

(4) The name, address, telephone number, and signature of the appellant or its attorney.

(b) *Service of size determination appeals.* The appellant must serve the appeal petition upon each of the following:

(1) The SBA official who issued the size determination;

(2) The contracting officer responsible for the procurement affected by a size determination;

(3) The business concern whose size status is at issue;

(4) All persons who filed protests; and

(5) SBA's Office of General Counsel.

(c) *Service of SIC appeals.* The appellant must serve the contracting officer who made the SIC code designation.

(d) *Certificate of service.* The appellant must attach to the appeal petition a signed certificate identifying each person or governmental agency which was served with the notice of appeal, and how and when each of those persons or governmental agencies was served.

(e) *Dismissal.* An appeal petition which does not contain all of the information required in paragraph (a) of this section may be dismissed, with or without prejudice, by the Judge at his or her own initiative, or upon motion of a respondent.

**§ 134.306 Transmission of the case file.**

Upon receipt of an appeal petition pertaining to a size determination, the Area Office which issued the size determination must immediately send to OHA the entire case file relating to that determination. Upon receipt of an appeal petition pertaining to a SIC code designation, the contracting officer who designated the SIC code must immediately send to OHA the solicitation relating to that designation.

**§ 134.307 Service and filing requirements.**

The provisions of § 134.204 apply to the service and filing of all pleadings and other submissions permitted under this subpart.

**§ 134.308 Limitation on new evidence and adverse inference from non-submission in appeals from size determinations.**

(a) Evidence not previously presented to the Area Office which issued the size determination being appealed will not be considered by a Judge unless:

(1) The Judge, on his or her own initiative, orders the submission of such evidence; or

(2) A motion is served and filed establishing good cause for the submission of such evidence.

(b) If the submission of evidence is ordered by a Judge, and the party in possession of that evidence does not submit it, the Judge may draw adverse inferences against that party.

## Small Business Administration

## § 134.401

### § 134.309 Response to an appeal petition.

(a) *Who may respond.* Any person served with an appeal petition, or any other interested person, may serve and file a response supporting or opposing the appeal. The response should present argument.

(b) *Time limits.* Unless otherwise specified by the Judge, a respondent must serve and file a response within 10 days after service of the appeal petition upon it.

(c) *Service.* The respondent must serve its response upon the appellant and upon each of the persons identified in the certificate of service attached to the appeal petition pursuant to § 134.305.

(d) *Reply to a response.* No reply to a response will be permitted unless the Judge directs otherwise.

### § 134.310 Discovery.

Discovery will not be permitted in appeals from size determinations or SIC code designations.

### § 134.311 Oral hearings.

Oral hearings will not be held in appeals from SIC code designations, and will be held in appeals from size determinations only upon a finding by the Judge of extraordinary circumstances. If such an oral hearing is ordered, the proceeding shall be conducted in accordance with those rules of subpart B of this part as the Judge deems appropriate.

### § 134.312 Evidence.

To the extent the rules in this subpart permit the submission of evidence, the provisions of § 134.223 (a) and (b) apply.

### § 134.313 Applicability of subpart B provisions.

The following sections from subpart B of this part apply to an appeal under this subpart C: § 134.207(a) (pertaining to amendments to pleadings); § 134.208 (Representation in cases before OHA); § 134.209 (Requirement of signature); § 134.210 (Intervention); § 134.211 (Motions); § 134.214 (Subpoenas); § 134.218 (Judges); § 134.219 (Sanctions); and § 134.220 (Prohibition against *ex parte* communications).

### § 134.314 Standard of review.

The standard of review is whether the size determination or SIC code designation was based on clear error of fact or law.

### § 134.315 The record.

Where relevant, the provisions of § 134.225 (a), (b), and (c) apply. In an appeal under this subpart, the contents of the record also include the case file or solicitation submitted to OHA in accordance with § 134.306.

### § 134.316 The decision.

(a) *Contents.* Following closure of the record, the Judge will issue a decision containing findings of fact and conclusions of law, reasons for such findings and conclusions, and any relief ordered.

(b) *Finality.* The decision is the final decision of the SBA and becomes effective upon issuance.

(c) *Service.* OHA will serve a copy of all written decisions on:

- (1) Each party, or, if represented by counsel, on its counsel; and
- (2) SBA's General Counsel, or his or her designee, if SBA is not a party.

### § 134.317 Termination of jurisdiction.

The jurisdiction of OHA will terminate upon the issuance of a decision.

### § 134.318 Return of the case file.

Upon termination of jurisdiction, OHA will return the case file to the transmitting Area Office. The remainder of the record will be retained by OHA.

## Subpart D—Rules of Practice for Appeals Under the 8(a) Program

SOURCE: 63 FR 35766, June 30, 1998, unless otherwise noted.

### § 134.401 Scope of the rules in this subpart D.

The rules of practice in this subpart D apply to all appeals to OHA from:

- (a) Denials of 8(a) BD program admission based solely on a negative finding(s) of social disadvantage, economic disadvantage, ownership or control pursuant to § 124.206 of this title;
- (b) Early graduation pursuant to §§ 124.302 and 124.304;

## **§ 134.402**

(c) Termination pursuant to §§ 124.303 and 124.304;

(d) Denials of requests to issue a waiver pursuant to § 124.515; and

(e) Suspensions pursuant to § 124.305(a).

### **§ 134.402 Appeal petition.**

In addition to the requirements of § 134.203, an appeal petition must state, with specific reference to the determination and the record supporting such determination, the reasons why the determination is alleged to be arbitrary, capricious or contrary to law.

### **§ 134.403 Service of appeal petition.**

(a) Concurrent with its filing with OHA, a concern must also serve SBA's AA/8(a)BD and the appropriate Associate General Counsel in SBA's Office of General Counsel with a copy of the petition, including attachments.

(1) For appeals relating to denials of program admission pursuant to § 124.206 of this title, suspensions of program assistance pursuant to § 124.305, or denials of requests for waivers pursuant to § 124.515, a petitioner must serve the SBA's Associate General Counsel for General Law.

(2) For appeals relating to early graduation pursuant to §§ 124.302 and 124.304 or termination pursuant to §§ 124.303 and 124.304, a petitioner must serve the SBA's Associate General Counsel for Litigation.

(3) Service on SBA's Office of General Counsel generally or the SBA General Counsel do not meet the service requirements of this section.

(b) Service should be addressed to the AA/8(a)BD and the applicable Associate General Counsel at the Small Business Administration, 409 3rd Street, SW, Washington, DC 20416.

### **§ 134.404 Decision by Administrative Law Judge.**

Appeal proceedings brought under this subpart will be conducted by an Administrative Law Judge.

### **§ 134.405 Jurisdiction.**

(a) The Administrative Law Judge selected to preside over an appeal shall decline to accept jurisdiction over any matter if:

## **13 CFR Ch. I (1-1-00 Edition)**

(1) The appeal does not, on its face, allege facts that, if proven to be true, would warrant reversal or modification of the determination, including appeals of denials of 8(a) BD program admission based in whole or in part on grounds other than a negative finding of social disadvantage, economic disadvantage, ownership or control;

(2) The appeal is untimely filed under § 134.202 or is not otherwise filed in accordance with the requirements of this subpart or the requirements in subparts A and B of this part; or

(3) The matter has been decided or is the subject of an adjudication before a court of competent jurisdiction over such matters.

(b) Once the Administrative Law Judge accepts jurisdiction over an appeal, subsequent initiation of an adjudication of the matter by a court of competent jurisdiction will not preclude the Administrative Law Judge from rendering a final decision on the matter.

(c) Jurisdiction of the Administrative Law Judge in a suspension case is limited to the issue of whether the protection of the Government's interest requires suspension pending resolution of the termination action, unless the Administrative Law Judge has consolidated the suspension appeal with the corresponding termination appeal.

### **§ 134.406 Review of the administrative record.**

(a) Except as provided in § 134.407, any proceeding conducted under this subpart shall be decided solely on a review of the written administrative record.

(b) The Administrative Law Judge's review is limited to determining whether the Agency's determination is arbitrary, capricious, or contrary to law. As long as the Agency's determination is reasonable, the Administrative Law Judge must uphold it on appeal.

(c) The administrative record must contain all documents that are relevant to the determination on appeal before the Administrative Law Judge and upon which the SBA decision-maker relied. The administrative record, however, need not contain all

## Small Business Administration

## § 134.501

documents pertaining to the petitioner. For example, the administrative record in a termination proceeding need not include the Participant's entire business plan file, documents pertaining to specific 8(a) contracts, or the firm's application for participation in the 8(a) BD program if they are unrelated to the termination action. The petitioner may object to the absence of a document, previously submitted to or sent by SBA, which the petitioner believes was erroneously omitted from the administrative record.

(d) Where the Agency files its answer to the appeal petition after the date specified in §134.206, the Administrative Law Judge may decline to consider the answer and base his or her decision solely on a review of the administrative record.

(e) The Administrative Law Judge may remand a case to the AA/8(a)BD (or, in the case of a denial of a request for waiver under §124.515 of this title, to the Administrator) for further consideration if he or she determines that, due to the absence in the written administrative record of the reasons upon which the determination was based, the administrative record is insufficiently complete to decide whether the determination is arbitrary, capricious or contrary to law, or where it is clearly apparent from the record that SBA made an erroneous factual finding (e.g., SBA double counted an asset of an individual claiming disadvantaged status) or a mistake of law (e.g., SBA applied the wrong regulatory provision in evaluating the case). Such a remand will be for a period of 10 working days.

### § 134.407 Evidence beyond the record and discovery.

(a) The Administrative Law Judge may not admit evidence beyond the written administrative record nor permit any form of discovery unless he or she first determines that the petitioner, upon written submission, has made a substantial showing, based on credible evidence and not mere allegation, that the Agency determination in question may have resulted from bad faith or improper behavior.

(1) Prior to any such determination, the Administrative Law Judge must permit SBA to respond in writing to

any allegations of bad faith or improper behavior.

(2) Upon a determination by the Administrative Law Judge that the petitioner has made such a substantial showing, the Administrative Law Judge may permit appropriate discovery, and accept relevant evidence beyond the written administrative record, which is specifically limited to the alleged bad faith or improper behavior.

(b) A determination by the Administrative Law Judge that the required showing set forth in paragraph (a) of this section has been made does not shift the burden of proof, which continues to rest with the petitioner.

### § 134.408 Decision on appeal.

(a) A decision of the Administrative Law Judge under this subpart is the final agency decision, and is binding on the parties.

(b) The Administrative Law Judge shall issue a decision, insofar as practicable, within 90 days after an appeal petition is filed. If the Administrative Law Judge does not issue a decision within 90 days after an appeal petition is filed, he or she must indicate the reason that the 90-day time limit has not been met in the decision, when issued.

(c) The Administrative Law Judge may reconsider an appeal decision within 20 days of the decision if there is a clear showing of an error of fact or law material to the decision.

## Subpart E—Implementation of the Equal Access to Justice Act

SOURCE: 61 FR 2683, Jan. 29, 1996. Redesignated at 63 FR 35766, June 30, 1998.

### § 134.501 What is the purpose of this subpart?

The Equal Access to Justice Act, 5 U.S.C. 504, establishes procedures by which prevailing parties in certain administrative proceedings may apply for reimbursement of fees and other expenses. Eligible parties may receive awards when they prevail over SBA, unless SBA's position in the proceeding was "substantially justified" or, as provided in §134.405(b), special circumstances make an award unjust. The

## **§ 134.502**

rules of this subpart explain which OHA proceedings are covered, who may be eligible for an award of fees and expenses, and how to apply for such an award.

### **§ 134.502 Under what circumstances may I apply for reimbursement?**

You may apply for reimbursement under this subpart if you meet the eligibility requirements in §134.406 and you prevail over SBA in a final decision in:

- (a) The type of administrative proceeding which qualifies as an “adversary adjudication” under §134.403; or
- (b) An ancillary or subsidiary issue in that administrative proceeding that is sufficiently significant and discrete to merit treatment as a separate unit; or
- (c) A matter which the agency orders to be determined as an “adversary adjudication” under 5 U.S.C. 554.

### **§ 134.503 What is an adversary adjudication?**

For purposes of this subpart, adversary adjudications are administrative proceedings before OHA which involve SBA as a party and which are required to be conducted by an Administrative Law Judge (“ALJ”). These adjudications (“administrative proceedings”) include those proceedings listed in §134.102 (a), (i), and (j)(1), but do not include other OHA proceedings such as those listed in §134.102(k). In order for an administrative proceeding to qualify, SBA must have been represented by counsel or by another representative who enters an appearance and participates in the proceeding.

### **§ 134.504 What benefits may I claim?**

You may seek reimbursement for certain reasonable fees and expenses incurred in prosecuting or defending a claim in an administrative proceeding.

### **§ 134.505 Under what circumstances are fees and expenses reimbursable?**

- (a) If you are a prevailing eligible party, you may receive an award for reasonable fees and expenses unless the position of the agency in the proceeding is found by the ALJ to be “sub-

## **13 CFR Ch. I (1–1–00 Edition)**

stantially justified”, or special circumstances exist which make an award unjust. The “position of the agency” includes not only the position taken by SBA in the administrative proceeding, but also the position which it took in the action which led to the administrative proceeding. No presumption arises that SBA’s position was not substantially justified simply because it did not prevail in a proceeding. However, upon your assertion that the position of SBA was not substantially justified, SBA will be required to establish that its position was reasonable in fact and law.

- (b) The ALJ may reduce or deny an award for reimbursement if you have unreasonably protracted the administrative proceeding or if other special circumstances would make the award unjust.

(c) Awards for fees and expenses incurred before the date on which an administrative proceeding was initiated are allowable only if you can demonstrate that they were reasonably incurred in preparation for the proceeding.

### **§ 134.506 Who is eligible for possible reimbursement?**

- (a) You are eligible for possible reimbursement if:

(1) You are an individual, owner of an unincorporated business, partnership, corporation, association, organization, or unit of local government; and

(2) You are a party, as defined in 5 U.S.C. 551(3); and

(3) You are the prevailing party; and

(4) You meet certain net worth and employee eligibility requirements set forth in §134.407.

- (b) You are not eligible for possible reimbursement if you participated in the administrative proceeding only on behalf of persons or entities that are ineligible.

### **§ 134.507 How do I know which eligibility requirement applies to me?**

Follow this chart to determine your eligibility. You should calculate your net worth and the number of your employees as of the date the administrative proceeding was initiated.

## Small Business Administration

## § 134.511

If your participation in the proceeding was:	Eligibility requirements:
(1) As an individual rather than a business owner .....	(1) Personal net worth may not exceed 2 million dollars.
(2) As owner of an unincorporated business .....	(2) Personal net worth may not exceed 7 million dollars, and No more than 500 employees.
(3) As a partnership, corporation, association, organization, or unit of local government.	(3) Business net worth may not exceed 7 million dollars, and No more than 500 employees.
(4) As a charitable or other tax-exempt organization described in 26 U.S.C. 501(c)(3) or a cooperative association as defined in 12 U.S.C. 1141j(a).	(4) No net worth limitations, and No more than 500 employees.

### § 134.508 What are the special rules for calculating net worth and number of employees?

(a) Your net worth must include the value of any assets disposed of for the purpose of meeting an eligibility standard, and must exclude any obligation incurred for that purpose. Transfers of assets, or obligations incurred, for less than reasonably equivalent value will be presumed to have been made for the purpose of meeting an eligibility standard.

(b) If you are an owner of an unincorporated business, or a partnership, corporation, association, organization, or unit of local government, your net worth must include the net worth of all of your affiliates. "Affiliates" are:

(1) Corporations or other business entities which directly or indirectly own or control a majority of the voting shares or other ownership interests in the applicant concern; and

(2) Corporations or other business entities in which the applicant concern directly or indirectly owns or controls a majority of the voting shares or other ownership interests.

(c) Your employees include all those persons regularly working for you at the time the administrative proceeding was initiated, whether or not they were at work on that date. Part-time employees must be included on a proportional basis. You must include the employees of all your affiliates in your total number of employees.

### § 134.509 What is the difference between a fee and an expense?

A fee is a charge to you for the professional services of attorneys, agents, or expert witnesses rendered in connection with your case. An expense is the cost to you of any study, analysis, engineering report, test, project, or similar matter prepared in connection with your case.

### § 134.510 Are there limitations on reimbursement for fees and expenses?

(a) Awards will be calculated on the basis of fees and expenses actually incurred. If services were provided by one or more of your employees, or were made available to you free, you may not seek an award for those services. If services were provided at a reduced rate, fees and expenses will be calculated at that reduced rate.

(b) In determining the reasonableness of the fees for attorneys, agents or expert witnesses, the ALJ will consider at least the following:

(1) That provider's customary fee for like services;

(2) The prevailing rate for similar services in the community in which that provider ordinarily performs services;

(3) The time actually spent in representing you; and

(4) The time reasonably spent in light of the difficulty and complexity of the issues.

(c) An award for the fees of an attorney or agent may not exceed \$75 per hour, and an award for the fees of an expert witness may not exceed \$25 per hour, regardless of the rate charged.

(d) An award for the reasonable cost of any study, analysis, engineering report, test, project or similar matter prepared on your behalf may not exceed the prevailing rate payable for similar services, and you may be reimbursed only if the study or other matter was necessary to the preparation of your case.

### § 134.511 What should I include in my application for an award?

(a) Your application must be in the form of a written petition which is served and filed in accordance with § 134.204. It must contain the following information:

## § 134.512

## 13 CFR Ch. I (1–1–00 Edition)

(1) A statement that OHA has jurisdiction over the case pursuant to § 134.102(g);

(2) Identification of the administrative proceeding for which you are seeking an award;

(3) A statement that you have prevailed, and a list of each issue in which you claim the position of SBA was not substantially justified;

(4) Your status as an individual, owner of an unincorporated business, partnership, corporation, association, organization, or unit of local government;

(5) Your net worth and number of employees as of the date the administrative proceeding was initiated, or a statement that one or both of these eligibility requirements do not apply to you;

(6) The amount of fees and expenses you are seeking, along with the invoice

or billing statement from each service provider;

(7) A description of any affiliates (as that term is defined in § 134.408), or a statement that no affiliates exist;

(8) A statement that the application and any attached statements and exhibits are true and complete to the best of your knowledge and that you understand a false statement on these documents is a felony punishable by fine and imprisonment under 18 U.S.C. 1001; and

(9)(i) Your name and address;

(ii) Your signature, or the signature of either a responsible official or your attorney; and

(iii) The address and telephone number of the person who signs the application.

(b) You should follow this chart to determine which further documents must be included with your application:

Party	Required documents
(1) Individual, owner of unincorporated business, partnership, corporation, association, organization, or unit of local government.	(1) Net worth exhibit.
(2) Organization qualified as tax-exempt under 26 U.S.C. 501(c)(3).	(2) Copy of a ruling by the Internal Revenue Service that you qualify as a 501(c)(3) organization or Statement that you were listed in the current edition of IRS Bulletin 78 as of the date the administrative proceeding was initiated.
(3) Tax-exempt religious organization not required to obtain a ruling from the Internal Revenue Service on its exempt status.	(3) Description of your organization and the basis for your belief you are exempt.
(4) Cooperative association as defined in 12 U.S.C. 1141j(a) ...	(4) Copy of your charter or articles of incorporation, and Copy of your bylaws.

### § 134.512 What must a net worth exhibit contain?

(a) A net worth exhibit may be in any format, but it must contain:

(1) List of all assets and liabilities for you and each affiliate in detail sufficient to show your eligibility;

(2) Aggregate net worth for you and all affiliates; and

(3) Description of any transfers of assets from, or obligations incurred by, you or your affiliates within one year prior to the initiation of the administrative proceeding which reduced your net worth below the eligibility ceiling, or a statement that no such transfers occurred.

(b) The net worth exhibit must be filed with your application, but will not be part of the public record of the

proceeding. Further, in accordance with the provisions of § 134.204(g), you need not serve your net worth exhibit on other parties.

### § 134.513 What documentation do I need for fees and expenses?

You must submit a separate itemized statement or invoice for the services of each provider for which you seek reimbursement. Each separate statement or invoice must contain:

(a) The hours worked in connection with the proceeding by each provider supplying a billable service;

(b) A description of the specific services performed by each provider;

(c) The rate at which fees were computed for each provider;



(d) The total charged by the provider on that statement or invoice; and

(e) The provider's verification that the statement or invoice is true to the best of his or her knowledge and that he or she understands that a false statement is punishable by fine and imprisonment under 18 U.S.C. 1001.

**§ 134.514 What deadlines apply to my application for an award and where do I send it?**

After you have prevailed in an administrative proceeding or in a discrete issue therein, you must serve, and file with OHA, your written application for an award, and its attachments, no later than 30 days after the decision in the administrative proceeding becomes final under § 134.227. The deadline for filing an application for an award may not be extended. If SBA or another party requests review of the decision in the underlying administrative proceeding, your request for an award for fees and expenses may still be filed, but it will not be considered by the ALJ until a final decision is rendered.

**§ 134.515 How will proceedings relating to my application for fees and expenses be conducted?**

Proceedings will be conducted in accordance with the provisions in subpart B of this part.

**§ 134.516 How will I know if I receive an award?**

The ALJ will issue an initial decision on the merits of your request for an award which will become final in 30 days unless a request for review is filed under § 134.228. The decision will include findings on your eligibility, on whether SBA's position was substantially justified, and on the reasonableness of the amount you requested. Where applicable, there will also be findings on whether you have unduly protracted the proceedings or whether other circumstances make an award unjust, and an explanation of the reason for the difference, if any, between the amount requested and the amount awarded. If you have sought an award against more than one federal agency, the decision will allocate responsibility

for payment among the agencies with appropriate explanation.

**§ 134.517 May I seek review of the ALJ's decision on my award?**

You may request review of the ALJ's decision on your award by filing a request for review in accordance with § 134.228. You may seek judicial review of a final decision as provided in 5 U.S.C. 504(c)(2).

**§ 134.518 How are awards paid?**

If you are seeking payment of an award, you must submit a copy of the final decision, along with your certification that you are not seeking judicial review of either the decision in the adversary adjudication, or of the award, to the following address: Chief Financial Officer, Office of Financial Operations, SBA, P.O. Box 205, Denver, CO 80201-0205. SBA will pay you the amount awarded within 60 days of receipt of your request unless it is notified that you or another party has sought judicial review of the underlying decision or the award.

**PART 136—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE SMALL BUSINESS ADMINISTRATION**

**Sec.**

136.101 Purpose.

136.102 Application.

136.103 Definitions.

136.104–136.109 [Reserved]

136.110 Self-evaluation.

136.111 Notice.

136.112–136.129 [Reserved]

136.130 General prohibition against discrimination.

136.131–136.139 [Reserved]

136.140 Employment.

136.141–136.148 [Reserved]

136.149 Program accessibility: Discrimination prohibited.

136.150 Program accessibility: Existing facilities.

136.151 Program accessibility: New construction and alterations.

136.152–136.159 [Reserved]

136.160 Communications.

136.161–136.169 [Reserved]

136.170 Compliance procedures.

AUTHORITY: 29 U.S.C. 794.